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his wife, in consideration of her release of dower in the residue of his estate, which was thereupon conveyed for the benefit of creditors, a creditor with knowledge, or means of knowledge, of the circumstances of the transaction, who participated in the sale of the husband's remaining lands free from the wife's dower, and received his share of the proceeds of the sale, making it impossible to place the wife in statu quo, could not thereafter maintain a bill to set aside the settlement to the wife as excessive.

[Ed. Note.—For other cases, see *Fraudulent Conveyances*, Cent. Dig. §§ 653-657; Dec. Dig. § 225.\* 5 Va.-W. Va. Enc. Dig. 283; 15 Va.-W. Va. Enc. Dig. 348.]

Appeal from Law and Equity Court of City of Richmond.

Suit by the Savings Bank of Richmond, a creditor of Charles L. Todd, insolvent, against John T. Powers, as trustee of Charles L. Todd and others. From a decree overruling the motion of complainant to refer the cause to a commissioner in chancery and dismissing the bill, it appeals. Affirmed.

*A. W. Patterson* and *W. S. McNeil*, both of Richmond, for appellant.

*H. R. Pollard*, of Richmond, for appellees.

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NORTHERN NECK STATE BANK, INC., *v.* GILBERT PACKING CO. et al.

March 13, 1913.

[77 S. E. 451.]

**1. Attachment (§ 115\*)—Affidavit—Sufficiency—Alternative Allegations.**—An attachment affidavit alleging that defendant was doing, or about to do, either the first or the second or the third of the three acts relied on as grounds for attachment was void; it being essential that at least one of the grounds be stated affirmatively.

[Ed. Note.—For other cases, see *Attachment*, Cent. Dig. §§ 315-322; Dec. Dig. § 115.\* 2 Va.-W. Va. Enc. Dig. 93; 14 Va.-W. Va. Enc. Dig. 133; 15 Va.-W. Va. Enc. Dig. 97.]

**2. Attachment (§ 241\*)—Abatement—Time.**—The authority given under Code 1904, § 2981, to enter judgment abating an attachment, may be exercised at any time before a final judgment disposing of the property attached, though a motion to abate the attachment has been previously overruled.

[Ed. Note.—For other cases, see *Attachment*, Cent. Dig. §§ 829-838; Dec. Dig. § 241.\* 2 Va.-W. Va. Enc. Dig. 119; 14 Va.-W. Va. Enc. Dig. 135.]

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes

**3. Attachment (§ 122\*)—Affidavit—Amendment.**—A fatally defective attachment affidavit cannot be amended, but the plaintiff must begin de novo.

[Ed. Note.—For other cases, see Attachment, Cent. Dig. §§ 323-337; Dec. Dig. § 122.\* 1 Va.-W. Va. Enc. Dig. 354.]

Error to Circuit Court, Westmoreland County.

Action by the Northern Neck State Bank, Incorporated, against the Gilbert Packing Company and others. A judgment was entered dismissing attachment proceedings and releasing attached property, and plaintiff brings error. Affirmed.

*J. W. Chinn, Jr.*, of Warsaw, for plaintiff in error.

*W. T. Mayo*, of Hague, and *T. J. Downing*, of Lancaster, for defendants in error.

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PENNINGTON *v.* THIRD NAT. BANK OF COLUMBUS, GA.

March 13, 1913.

[77 S. E. 455.]

**1. Banks and Banking (§ 156\*)—Collections—Title to Proceeds.**—The collection of a draft by a bank for a customer in the ordinary course of business, the proceeds being placed to the customer's credit, amounts to a general deposit by the customer, and creates the relation of debtor and creditor between them.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. §§ 539-546; Dec. Dig. § 156.\* 2 Va.-W. Va. Enc. Dig. 262; 15 Va.-W. Va. Enc. Dig. 113.]

**2. Banks and Banking (§ 75\*)—Deposits—Receipt after Insolvency.**—The receipt of a deposit by a bank, with knowledge of its insolvency, is a fraud on the customer, makes the bank a constructive trustee, and entitles the depositor to recover the deposit, if it can be identified, or its equivalent, if mingled with the bank's funds, so that it cannot be identified.

[Ed. Note.—For other cases, see Banks and Banking, Cent. Dig. § 157; Dec. Dig. § 75.\* 2 Va.-W. Va. Enc. Dig. 262.]

**3. Banks and Banking (§ 116\*)—Deposits—Receipt after Insolvency.**—A bank, whose cashier received a deposit after it was insolvent, was charged with the cashier's knowledge of such insolvency, although due to his and the assistant cashier's defalcations, since he was acting for it within the scope of his powers, and his knowledge, however acquired, was its knowledge.

[Ed. Note.—For other cases, see Banks and Banking Cent. Dig.

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.